

1984 WL 249993 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1984

*1 Leon Ray Bowman
Chief of Police
Town of Norway
Post Office Box 127
Norway, South Carolina 29113

Dear Chief Bowman:

In a letter of this Office you requested advice as to two ordinances of the Town of Norway.

One ordinance states as follows:

'It shall be unlawful for any person to keep open or operate any public dance hall or club, or allow any person to continue thereat, between the hours of 12:00 midnight, Saturday, and 6:00 A.M. Monday, and all such places shall be and remain closed to the public between such hours.'

A state statute, [Section 52-13-10, Code of Laws of South Carolina](#), 1976 prohibits the operation of 'public dance halls' between the hours of midnight Saturday and midnight Sunday. A previous opinion of this Office, 1964 Op. Atty. Gen. No. 1703 p. 162, a copy of which is enclosed, provides a definition of dance halls generally.

In examining your ordinance, possible problems exist. Generally,

'(u)nder specific authorization or under general police power municipal corporations can make regulations as to hours of business for certain businesses, where the regulations are reasonable and based on fair classification and where they are reasonably related to a legitimate object of the police power, to wit, the public health, safety, morality or welfare. . . . The power of municipal corporations to regulate hours of business in private business enterprises is not, of course, unlimited Ordinances and regulations pertaining to hours of business in private enterprise must conform to the statutes and public policy of the State Ordinances regulating hours of business must, of course, be reasonable, and not arbitrary, having no relation to the public interest.' McQuillin Mun. Corp. (3rd Ed.), Sections 24.328, 24.329, 24.330, pp. 203-205.

In another opinion of this Office dated September 5, 1979, a copy of which is also enclosed, it was stated that certain ordinances which attempt to regulate the hours of operation of lawful businesses may be unconstitutional inasmuch as they may constitute an unlawful taking of property.

Referencing the above, problems with the ordinance cited above may exist. However, as stated, there is a general State law which restricts the operation of 'public dance halls' in the hours referenced which could be presently utilized where applicable. While only a court could determine the matter conclusively, arguments may be made as to whether the Town may enact an ordinance which is broader than the State law and as to the prohibition of the operation of 'clubs', as to whether such designation is overbroad or vague. As pointed out, constitutional problems exist in certain restrictions on the operation of businesses. I would strongly advise that you discuss these matters with your town attorney inasmuch as the constitutionality of such ordinance is not free from doubt.

The other ordinance referenced in your letter restricts the possession and consumption of beer and wine in businesses licensed to sell such between certain hours. In a previous opinion of this Office dated August 22, 1984, a copy of which is also enclosed, it was determined that counties generally lacked authority to regulate the hours beer and wine may be sold. Such determination would also be applicable to municipalities. The opinion referenced Section 33, Part II of Act 512 of 1984 which states:

*2 'The South Carolina Alcoholic Beverage Control Commission is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine, or alcoholic beverages and is authorized to establish conditions or restrictions which the Commission in its discretion considers necessary before issuing or renewing any license or permit.'

The opinion states that '(t)he express language of this provision evinces the legislative intent that the State, through the Alcoholic Beverage Control Commission, shall be the exclusive authority to regulate the operation of beer and wine outlets.' Therefore, the matters addressed in your ordinance would similarly be matters within the exclusive authority of the State to regulate.

Again, I suggest that you discuss the conclusions of this letter with your town attorney. I would also advise that any problems dealing with the sale and consumption of beer and wine at certain licensed locations be discussed with the ABC Commission inasmuch as they may be in a position to assist you.

With best wishes.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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